

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

PRINCE McCOY, SR., #852958

§

VS.

§

CIVIL ACTION NO. 6:19cv510

GARY WRIGHT, ET AL.

§

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Plaintiff Prince McCoy, an inmate currently confined at the Stiles Unit within the Texas Department of Criminal Justice (TDCJ), proceeding *pro se*, filed this civil rights action alleging purported violations of his constitutional rights. The case was referred to the United States Magistrate Judge, the Honorable John D. Love, for findings of fact, conclusions of law, and recommendations for the disposition of the case.

On December 19, 2019, Judge Love issued a Report (Docket no. 10), recommending that Plaintiff's civil rights complaint be dismissed without prejudice for Plaintiff's failure to comply with an order of the Court. Judge Love also recommended that Plaintiff's motion to amend his complaint (Docket no. 9) be denied as well for Plaintiff's failure to comply.

The order with which Plaintiff failed to comply was issued on November 5, 2019, when Judge Love ordered Plaintiff to replead (Docket. no. 4) because his seventy-page complaint did not set out a short and plain statement of his claim(s) under Federal Rule of Civil Procedure 8(a) and also failed to comply with this Court's local rule concerning page limits. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The November 5 order to replead specifically explained to Plaintiff that his civil rights complaint must be no longer than thirty pages—excluding any attachments—and that the failure to comply with the order may result in the dismissal of his complaint.

On December 2, 2019, Plaintiff filed an amended complaint (Docket no. 8). One day later, Plaintiff filed a motion for leave to file an amended complaint (Docket no. 9), which was not a motion but rather a continuation of the amended complaint filed on December 2. The first document ends with paragraph 227 and the second document begins with paragraph 228 and ends with paragraph 324. In totality, the amended complaint is approximately 72 pages. Plaintiff's filings blatantly ignore the November 5 order to replead.

After Judge Love issued his Report recommending dismissal, Plaintiff filed a motion to alter the judgment (Docket no. 12), which is construed as objections to Judge Love's Report. The Court has conducted a careful *de novo* review of the record and the Judge Love's proposed findings and recommendations. *See* 28 U.S.C. § 636(b)(1) (District Judge shall "make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made."). Upon such *de novo* review, the Court has determined that the Report of the United States Magistrate Judge is correct and that Plaintiff's objections are without merit. Accordingly, it is

ORDERED that the Report of the United States Magistrate Judge (Docket no. 10) is **ADOPTED** as the opinion of the Court. Plaintiff's motion to alter the judgment (Docket no. 12), which is construed as objections, is **DENIED** and **OVERRULED**. Further, it is

ORDERED that Plaintiff's civil rights lawsuit is **DISMISSED** without prejudice for Plaintiff's failure to comply with an order of the Court. Plaintiff may, if desired, file a new lawsuit based on the current allegations in a complaint that meets the requirements set forth in the Court's previous orders and the Local Rules. Plaintiff's motion for leave to file an amended complaint (Docket no. 9) is **DENIED**. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby **DENIED**.

So **ORDERED** and **SIGNED** this **28th** day of **January, 2020**.

A handwritten signature in black ink, reading "Jeremy D. Kernodle", is positioned above a horizontal line.

JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE